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April 4, 2016

Via ECF only
Honorable Madeline Cox Arelo, U.S.D.J.
Honorable Leda D. Wettre, U.S.M.J.
MLK Federal Bldg. & U.S. Courthouse
50 Walnut Street
Newark, NJ 07101

Re: ***Tremaine Watkins v. Pressler & Pressler, LLP, et al.***
Docket No. 2:16-cv-00119 (MCA) (LDW)

Dear Judges Arleo and Wettre:

The Wolf Law Firm, LLC along with co-counsel represents the Plaintiff in this matter. Please accept this letter in response to Defendant Pressler & Pressler's ("Pressler") letter of March 22, 2016 in the above-referenced action.

Defendant's request for leave to file a motion for judgment on the pleadings should be denied as Plaintiff's Complaint states a valid cause of action under the Fair Debt Collection Practices Act ("FDCPA"). The New Jersey Courts have established strict requirements for pre-garnishment notice and the process for waiver of that notice. The Rules provide that "[p]roceedings for the issuance of an execution against the wages … of a judgment debtor shall … be on notice to the debtor." *R.* 4:59-1(e). The Rule sets forth the specific information that must be included in the court-mandated notice as follows: (1) that the application will be made for an order directing a wage execution to be served on the defendant's named employer; (2) the limitations prescribed by 15 U.S.C.A. §§ 1671-1677, inclusive and N.J.S. 2A:17-50 *et seq*. and N.J.S. 2A:17-57 *et seq*. on the amount of defendant's salary which may be levied upon; (3) that defendant may notify the court and the plaintiff in writing within ten days after service of the notice of reasons why the order should not be entered; (4) if defendant so notifies the clerk, the application will be set down for hearing of which the parties will receive notice as to time and place, and if defendant fails to give such notice, the order will be entered as of course; and (5) that defendant may object to the wage execution or apply for a reduction in the amount withheld at any time after the order is issued by filing a written statement of the objection or reasons for a reduction with the clerk and sending a copy to the creditor's attorney or directly to the creditor if there is no attorney, and that a hearing will be held within seven days after filing the objection or application for a reduction. [*R.* 4:59-1(e)].

The New Jersey Supreme Court has developed and approved a form Notice of Application for Wage Execution, set forth in Appendix XI-I to the New Jersey Court Rules. The Court Rules state that Appendix XI-I "shall be used" in all actions pending in the Law Division, Civil Part, and the Special Civil Part. *R.* 4:59-1(i)[*emphasis added*]. The judicially-mandated Notice of Application contains all of the information required by *Rule* 4:59-1(e) and the statutes referenced therein. *See Midland Funding, L.L.C. v. Giambanco*, 422 *N.J. Super.* 301, 307 (App. Div. 2011). The right to the required pre-garnishment notice may be waived, ***but only if the waiver is "knowing and informed."*** *Giambanco*, 422 *N.J. Super.* at 305 (emphasis added). "If the right to notice and an opportunity to be heard are to be waived then the waiver must be 'a voluntary, clear and decisive act, implying an election to forego some advantage which the waiving party might have insisted on.'" *Id.* at 316 (*citation omitted*). In order for such a waiver to be knowing and informed, the judgment debtor must receive a notice of their "important rights and consequence of a waiver…." *Id.* at 311. In other words, judgment-debtors must still receive a notice sufficient to inform them of the rights they are being asked to waive, and the consequences of waiving those rights, even in the event they agree to a waiver of the court-mandated official notice.

In *Giambanco*, the court noted that the proposed waiver being reviewed was deficient because the judgment debtor "would completely lose her right to object to the garnishment before it starts," and that "the lack of knowledge extends not merely to the pre-garnishment right to object to the garnishment but also to the limit on how much can be taken out." *Giambanco*, *Id.* at 307-08. These principles of fairness to the judgment-debtor were also addressed in *First Resolution Inv. Corp. v. Seker*, 171 N.J. 502 (2001) in which the New Jersey Supreme Court directed the Civil Practice Committee to amend Appendix XI-I to include a notice of the right to object to a wage garnishment after it has been issued, in order to ensure that the model form included all of the information set forth in *Rule* 4:59-1(e). *Seker*, 171 *N.J.* at 516. The Court made this determination "not because of a constitutional mandate, but as a matter of fairness and sound public policy." *Id.* at 515. Accordingly, any consent order that contains a waiver of the judgment debtor's rights related to wage executions must be "entered with the judgment debtor's full knowledge and understanding of the consequences of the waiver." *Giambanco*, at 422 *N.J. Super.* at 313.

Pressler's Form Consent Order is deficient and withholds notice of important rights from judgment debtors. The Consent Order states that, upon default, "a wage execution shall issue without further notice to the said Defendant(s) upon the filing of a certification of default by Attorneys for Plaintiff." Pl. Compl. Ex. A. The "waiver/acknowledgment" term in the consent order lacks an explicit notice of the following rights:

- ➢ That the judgment debtor is waiving his or her right to file an objection and request a hearing as to why a wage garnishment order should not be issued *prior to* the issuance of a wage execution, a notice which is required to be given by *Rule* 4:59-1(e)(3)-(4);

- ➢ The specific dollar figures and percentage limitations on the amounts that may be garnished from wages, a notice which is required to be given by *Rule* 4:59-1(e)(2) and *N.J.S.A.* 2A:17-56, and which are clearly set forth in Appendix XI-I;

- ➢ That upon default Pressler would make an application for an order directing a wage execution to be served directly on Plaintiff's employer;

- ➢ That in the event Plaintiff's disposable earnings were less than the monetary limits established by Federal and State law, no amount would be garnished, and in no event would more than ten percent of her gross salary be garnished; and

- That the judgment debtor's employer is prohibited from discharging him or her by reason of a wage garnishment, a notice which is required be given by *Rule* 4:59-1(e)(2) and 15 *U.S.C.* § 1674, and which is clearly set forth in Appendix XI-I.

The actual monetary and percentage limitations on wage executions are clearly explained in the model notice at Appendix XI-I. However, similar to the consent order examined in *Giambanco*, Pressler's consent order "does not fully inform [Plaintiff] of the notice provisions contained in *N.J.S.A.* 2A:17-50(a) and *Rule* 4:59-1(d) [now subpart (e)] which [Plaintiff] waived by executing the consent judgment." *Giambanco*, 422 *N.J. Super.* at 315. Pressler's mere reference to the applicable statutes does not cure these deficiencies. *Rule* 4:59-1(e) and the *Giambanco* decision require that the judgment debtor receive notice of "the limitations prescribed by" the applicable statutes, not the statutory citations.

Defendant further argues that entry of a consent judgment by the court creates a presumption that there was sufficient notice provided to the judgment-debtor.[1] Consent judgments are authorized by Rule 4:42-1 and have "been characterized as being both a contract and a judgment[;] it is not strictly a judicial decree, but rather in the nature of a contract entered into with the solemn sanction of the court." *Id.* Therefore, "for a consent judgment to be valid, like a contract, the parties' consent must be knowing and informed." *Id.* (citations omitted). "There must be the proverbial 'meeting of the minds.'" *Giambanco*, 422 N.J. Super. 301, 310-311 (citations omitted). Here, as in *Giambanco*, the consent judgment failed to reflect that the judgment-debtor was fully informed of "what relief was granted" by virtue of the waiver. Therefore, the consent judgment was not valid.

When considering a motion to dismiss a complaint for failure to state a claim upon which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b)(6), a court must accept all well-pleaded allegations in the complaint as true and view them in the light most favorable to the plaintiff. *Evancho v. Fisher*, 423 F.3d 347, 351 (3d Cir. 2005). Plaintiff has adequately pleaded an FDCPA claim by alleging that Pressler committed unlawful acts in attempting to collect consumer debts by sending Consent Orders to Plaintiff and those similarly situated that contained an improper waiver of important rights concerning post-judgment wage garnishment. It is therefore respectfully requested that the Court deny Pressler's request for leave to file a motion for judgment on the pleadings.

Respectfully submitted,

s/ Bharati Sharma Patel
Bharati Sharma Patel
The Wolf Law Firm, LLC
Attorneys for Plaintiffs and the putative class

cc: All counsel of record (via ECF)

[1] Pressler argues that it provided the court-form Notice of Application for Wage Execution to Plaintiff advising her of her rights. *See Def. Ltr.*, p. 3 n.3. However, the court entered the consent judgment on April 10, 2015 and Pressler did not allegedly send Plaintiff the Notice until July 27, 2015. *Id.* at pp. 1 & 3 n.3.